IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9516 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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J.D. DABHI BRANCH MANAGER & 2 - Applicant(s)
Versus
MAGANBHAI FATABHAI RATHOD & 1 - Respondent(s)

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Appearance :

MR PV NANAVATI for Applicant(s) : 1 - 3.MR VIBHUTI NANAVATI for Applicant(s) : 1 - 3.
MR RAJ R SHARMA for Respondent(s) : 1,
MR MENGDEY, ADDL PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/09/2007

ORAL JUDGMENT

By way of this application u/s 482 of Criminal Procedure Code, the petitioner, - original accused have prayed for an appropriate order to quash and

set aside the criminal proceedings being criminal case No.157/07 pending in the Court of ld. Addl. JMFC, Kapadvanj inclusive of the process issued by the learned trial Court in the said case.

2. That the petitioner No.1 is the Branch Manager of United India Insurance Company Ltd., petitioner No.2 is the Divisional Manager of the United India Insurance Company Ltd. and petitioner No.3 is the Manager of Regional Office, United India Insurance Company Ltd. A criminal complaint being criminal case No.157/07 came to be filed by the respondent No.1 herein against the petitioners, - original accused in the Court of ld. Addl. JMFC, Kapadvanj for the offence u/s 406, 422, 506 and 114 of the IPC alleging inter alia that he had been entrusted with the work of tagging the cattle which have been insured by the United India Insurance Company Ltd. under the Cattle Insurance Policy for the year 1983-2001. It was further alleged that the officers of the insurance company, - original accused persons had promised to pay Rs.5/- per cattle for tagging. However, the petitioner No.1 herein branch office paid him Rs.2/- per cattle for tagging upto 30-10-2000 and accordingly he was paid Rs.53,816/- for his work of tagging at the rate of Rs.2/- per cattle in stead of Rs.5/- per cattle. It is alleged in the complaint that he was entitled to receive balance amount of Rs.80,724/- from the petitioner insurance company and accordingly he issued notice through its advocate on 11-12-06 and though the accused persons received the demand notice, have failed and

neglected to pay the said amount and further neglected to repay the said amount and therefore, it is alleged that the petitioners have committed the offence u/s 406, 422, 506 and 114 of the IPC. The ld. JMFC after taking cognizance of the criminal complaint, issued summons under the provisions of the section 204 of the Criminal Procedure Code against all the petitioners and therefore, the petitioners have preferred the present application u/s 482 of Criminal Procedure Code to quash and set aside the impugned complaint and the summons issued by the learned trial Court in the aforesaid criminal case.

3. Shri Nanavati, learned advocate appearing on behalf of the petitioners has vehemently submitted that on bare reading of the allegations and averments in the complaint, it does not disclose any offence by the petitioners for the offence u/s 406, 422, 506 and 114 of the IPC. It is submitted that the dispute which has been raised in the complaint is purely of a civil nature and for recovery of Rs.80724/- for which only remedy available to the original complainant is to file a suit if the complainant is aggrieved. It is submitted that instead of filing suit for recovery, the original complainant with mala fide intention has filed the impugned criminal complaint and the civil dispute is converted into criminal dispute and therefore, it is requested to quash and set aside the impugned complaint by submitting that to continue the criminal proceedings against the petitioners would be abuse

of process of Court and unnecessary harassment to the petitioner. It is submitted that even considering the averments and allegations in the complaint on its face value, no case is made out against the petitioner for the offence u/s 406, 422, 506 and 114 of the IPC and therefore, it is requested to exercise powers u/s 482 of Criminal Procedure Code and to quash and set aside the impugned complaint and the summons issued by the learned trial Court.

4. On the other hand, Shri Rachh, learned advocate appearing on behalf of the respondent No.1, - original complainant has vehemently submitted that it is not that whenever a civil dispute is there, there cannot be a criminal offence. It is submitted that on bare reading of the complaint, a case is made out against the petitioners for the offence u/s 406, 422, 506 and 114 of the IPC, as on the very beginning, their intention was not to pay the charge at the rate of Rs.5/- per cattle and deliberately make the payment at the rate of Rs.2/- per cattle. This shows the intention to cheat the complainant and therefore, it is requested not to exercise the powers u/s 482 of Criminal Procedure Code.

5. Shri Mengdey, ld. APP has requested to pass appropriate order considering the averments and allegations in the complaint.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. Now, considering the averments and allegations in the complaint, it appears that the case of the original complainant is that the petitioners had promised to pay Rs.5 per cattle for tagging and instead of that, the petitioner No.1 branch office paid him at the rate of Rs.2 per cattle for tagging upto 30-10-2000 and accordingly the complainant was paid Rs.53,816/- for his work of tagging at the rate of Rs.2/- per cattle in stead of Rs.5/- per cattle and accordingly, he was entitled to receive balance amount of Rs.80,724/- which has not been paid by the petitioners in spite of the demand notice. Thus, in sum and substance, the allegations against the petitioners are for non payment of the alleged balance amount of Rs.80724/- considering the work of tagging at Rs.5 per cattle. It is required to be noted that the original complainant has done the work of tagging of cattle upto 30-10-2000 and the dispute is for the period upto 30-10-2000 against which the impugned criminal complaint has been filed in the year 2007. Assuming that the complainant was entitled the charge at the rate of Rs.5 per cattle, which is disputed by the petitioners and the payment is made at the rate of Rs.2 per cattle that too in the year 2000, it cannot be said that the petitioners have committed any offence as alleged. On bare reading of the impugned complaint and the averments and considering the averments and allegations in the complaint on its face value, it appears to the Court that a civil dispute is tried to be converted into a criminal

dispute by filing the impugned complaint which is nothing but an abuse of process of Court and under the circumstances, this is a fit case to exercise powers u/s 482 of Criminal Procedure Code. A case falls within the parameters of the exercise u/s 482 of Criminal Procedure Code. To continue the criminal proceedings against the petitioners would be an abuse of process of Court and under the circumstances, the impugned complaint and the summons issued by the learned trial Court requires to be quashed and set aside.

8. For the reasons stated above, the present application succeeds. The criminal proceedings being criminal case No.157/07 pending in the Court of ld. Addl. JMFC, Kapadvanj inclusive of the process issued by the learned trial Court in the said case against the petitioners are hereby quashed and set aside. Rule made absolute accordingly.

(M.R. Shah, J.)

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